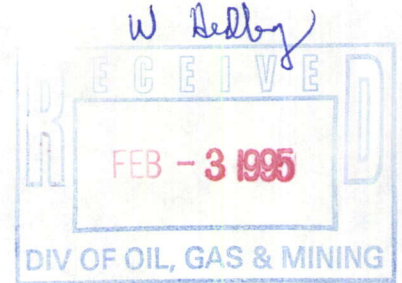


PARSONS BEHLE & LATIMER

A Professional Law Corporation

February 2, 1995



CERTIFIED MAIL RETURN RECEIPT REQUESTED

Scott Hirschi, Director
School and Institutional Trust
Lands Administration
355 West North Temple
3 Triad Center, Suite 400
Salt Lake City, Utah 84180-1204

**Re: Request for Agency Action and Request for Hearing
State Lease ML44446**

Dear Mr. Hirschi:

This is a request for agency action and request for hearing, pursuant to the School and Institutional Trust Lands Management Act¹ ("Management Act") and the Administrative Procedures Act,² on behalf of Chemical Lime Company of Arizona, an Arizona corporation qualified to do business in Utah ("Chemical Lime" or "Lessee"). Chemical Lime is the lessee under Mineral Lease 44446 (the "Lease"), attached as Exhibit 1 and incorporated by this reference. Chemical Lime seeks rescission of cancellation of the Lease. The pertinent facts are as follows.

1. The Board of State Lands and Forestry and Division of State Lands and Forestry (collectively "Lands Division") issued the Lease to Chemstar, Inc. ("Chemstar") on July 31, 1989 for a primary term of 10 years. The Lease grants to Chemstar the exclusive right and privilege to explore for, drill for, mine, remove and dispose of building stone and limestone on a tract of land in Tooele County, containing 240 acres, located in NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, S.36, T.1S., R.7W., SLB&M.

2. Chemstar's name has been changed to Chemical Lime Company of Arizona. This is a name change only and effects no other change in the Lessee.

3. The Lease requires a rental payment of \$240.00, which is due annually on August 1. The Lands Division annually sent courtesy billing notices to Chemstar, Inc., 2800 N. 44th Street, Suite 400, Phoenix, Arizona 85008. The Lessee came to rely on receipt of the courtesy billing notices as notification that the annual rental payment was due.

¹ Utah Code Ann. § 53C-1-101 et seq.

² Utah Code Ann. § 63-46b-0.5 et seq.

4. In addition to the Phoenix office, and as required by the Lease (Article XIV), Lessee also maintains an office within the state of Utah and a resident agent on whom process may be served. The mailing address of the Utah office is P.O. Box 537, Grantsville, UT 84029. Lessee's agent for service of process is Prentice Hall Corp. System, Inc., address at time of lease: 185 South State Street, Salt Lake City, Utah 84111; current address: 201 South Main, Suite 1800, Salt Lake City, Utah 84111. The Lands Division had notice of Lessee's Utah office, which was identified in the Lease application. See Exhibit 2, incorporated by this reference. In addition, the Lands Division corresponded with Lessee at its Utah office. See letter dated June 7, 1994 from the Lands Division to Lessee, attached as Exhibit 3 and incorporated by this reference. Lessee's agent for service is registered with the Utah Division of Corporations and Commercial Code.

5. Pursuant to the Management Act, Utah Code Ann. § 53C-1-101 et seq., administration of the Lease was transferred from the Lands Division to the School and Institutional Trust Lands Administration ("SITLA") effective July 1, 1994. On or about August 8, 1994, the SITLA sent a courtesy billing notice by certified mail, return receipt requested, to Chemstar at its Phoenix office. As the Phoenix office had been closed, the Postal Service returned the notice unclaimed to the SITLA on or about August 17, 1994. A copy of the courtesy billing notice is attached as Exhibit 4 and incorporated by this reference. Although the courtesy billing notice includes a statement that failure to pay rent may lead to lease cancellation, it omits any statement that a lessee is entitled to cure a default or to request a hearing within 30 days of default. As Lessee did not receive the courtesy billing notice, it inadvertently did not timely remit the lease payment which was due on August 1, 1994. On information and belief, the SITLA made no other effort to notify Lessee of its non-payment and its rights to cure or to hearing. On information and belief, the SITLA cancelled the Lease on or about September 8, 1994.

6. The Management Act, Utah Code Ann. § 53C-2-409(1) requires the director of the SITLA to provide notice of default by registered or certified return-receipt mail, including notice of opportunity to cure a default and notice of the Lessee's right to hearing if requested within 30 days. The SITLA has not given any notice to Lessee of lease default and Lessee's right to cure or to hearing within 30 days. Lessee first received actual notice of the SITLA's cancellation of the Lease when the Division of Oil, Gas & Mining ("DOGM") sent to Lessee by telecopy on January 5, 1995, a copy of a letter of protest by SITLA, dated January 3, 1995, concerning Lessee's renewal of its mining and reclamation plan respecting the leased premises. See Exhibit 5, incorporated by this reference. Upon receiving a copy of the SITLA letter, Lessee immediately tendered the lease payment, which

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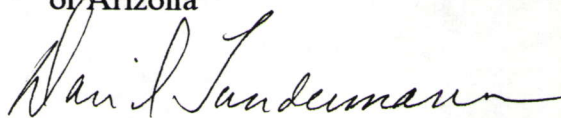
tender is attached as Exhibit 6 and incorporated by this reference. The SITLA refused Lessee's tender by letter dated January 9, 1995, attached as Exhibit 7 and incorporated by this reference.

The SITLA's cancellation of the Lease without notice as required by the Management Act and its rejection of Lessee's tender of payment have deprived the Lessee of due process, violate the Management Act and are otherwise not in accordance with law. The SITLA knew the address of Lessee's Utah office and could easily have obtained the address of Lessee's agent for service from the Division of Corporations and Commercial Code, yet it made no effort to provide notice to Lessee in Utah. The SITLA failed to make reasonable efforts to inform Lessee of its default and right to cure and to hearing, and thereby violated Lessee's statutory and constitutional rights. See Anderson v. Public Service Comm'n of Utah, 839 P. 2d 822, 825 (Utah 1992). The August 9, 1994 courtesy billing notice was inadequate because it was sent to an out-of-state address, where the Lease provides for the sending of notices to Lessee's resident agent, and because due process requires that the right to hearing be stated in the notice. Worrall v. Ogden City Fire Dept., 616 P.2d 598 (Utah 1980).

Lessee requests a hearing and rescission of the SITLA's illegal and unlawful cancellation of the Lease. Without waiving its right to hearing, Lessee is willing to seek informal resolution of this matter. Kindly contact the undersigned. Thank your for your consideration.

Very truly yours,

PARSONS BEHLE & LATIMER
Attorneys for Chemical Lime Company
of Arizona



David W. Tundermann

Enclosures

cc: Steven F. Alder, Esq.
✓ Lowell Braxton
Patricia LaRue, Esq.